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STATE OF MARYLAND
OPEN MEETINGS COMPLIANCE BOARD

15 Official Opinions of the Compliance Board 79 (2021)

Annapolis Democratic Central Committee

July 8, 2021

The Complainant alleges that the Annapolis Democratic Central Committee (“Committee”) has improperly excluded him from its monthly gatherings, in violation of the Open Meetings Act (“Act”). The Committee responds that the Act does not apply because its members discuss only “private party business” at those gatherings. Based on the submissions, we cannot conclude that the monthly gatherings are “meetings” of a “public body” as the Act defines those terms. Accordingly, we find no violation.

Background

On April 13, 2021, the Complainant emailed the Committee’s chairperson (“Chair”) to ask how to attend the Committee’s monthly gatherings. The Chair responded that the Committee had “determined that [it] will not be inviting or allowing observers at [its] monthly meetings until after the election in November.”

On May 7, 2021, the Complainant emailed the City of Annapolis (“City”), requesting access to the meetings of the Committee and minutes of all meetings conducted since January 2021. The City responded that the Committee is “not a governmental board or commission,” it “operates independently from the City of Annapolis government,” and the City does not maintain records for the Committee.

On May 10, 2021, the Complainant filed a complaint, alleging that the Committee is violating the Act “by unlawfully conducting closed meetings.”¹

Discussion

The Act applies only if: (1) a “public body” is involved; (2) the public body is holding a “meeting”; and (3) the substance of the meeting is subject to the Act. Md. Code Ann., Gen. Prov. §§ 3-101, 3-103.² *Accord Grant v. County Council of Prince George’s County*, 465 Md. 496, 522 (2019); 6 *OMCB Opinions* 63, 66 (2008). If any one of these

¹ Although the complaint names both the Committee and the City as “defendants,” our procedures contemplate a response only by the alleged public body accused of violating the Act. Md. Code Ann., Gen. Prov. § 3-206(a) & (b). *See also* 15 *OMCB Opinions* 24, 24 (2021) (requiring a response of Rockville Economic Development, Inc., but not of the City of Rockville).

² Unless otherwise noted, statutory references are to the General Provisions Article of the Maryland Annotated Code.

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elements is absent, “the entity is not obliged to comply with the Act (though it may do so voluntarily).” 4 *OMCB Opinions* 84, 85 (2005).

Whether the Committee is a “public body” is a close question, though one we need not resolve. Regardless of the answer, we find that the submissions fail to establish that the Committee’s monthly gatherings constitute “meetings” as defined by the Act. Accordingly, we find no violation.

1. *Whether the Committee is a “public body”*

The Act defines “public body” in several ways, including as a multimember entity created by law. § 3-101(h)(1). Although this definition “is usually easy to apply,” Office of the Attorney General, *Open Meetings Act Manual* 1-2 (10th ed., Jan. 2021), our analysis here is complicated by the entity’s relationship to a political party and our limited knowledge of how the Committee came into existence.

“Public bodies” include entities established by ordinance, § 3-101(h)(1)(ii)(5), and the Complainant asserts that § 4.12.010 of the City’s code established the Committee. The ordinance provides that “[t]he two leading political parties of the State in the City shall each elect a City Central Committee at the primary election,” with each committee “composed of one member from each ward of the City and one member at large.” City of Annapolis, Code of Ordinances, § 4.12.010. Members of each central committee serve four-year terms, “and their duties shall be those as set forth in the Charter and [the Annapolis] code,” *id.*, which assign the central committees tasks related to nominating members of the city’s Board of Supervisors of Elections and filling vacancies on the city council, *see* Annapolis City Charter, Art. II, § 6 (providing that, “[b]efore appointing any supervisors of election, the city council shall request the city central committees . . . each to designate at least four (4) eligible candidates for the position to be filled”), *id.* at § 7(a) (providing that, “whenever a vacancy” on the city council “shall occur with less than fifteen (15) months remaining until the next general election,” “the central committee of the political party to which the person vacating was registered” shall select the person to fill the vacancy); City of Annapolis, Code of Ordinances, § 4.20.040 (governing vacancies in nominations for city council when no candidate of a particular party files for office), *id.* at § 4.20.160 (governing vacancies in nominations when a candidate declines a nomination, is disqualified, or dies, and in the case of a tie vote in a primary election).

The Committee acknowledges that “it is established in” the Annapolis charter and code and “has specific public purposes,” namely to nominate members to the City’s elections board and to fill vacancies on the city council when a member of the Democratic Party vacates a council seat. However, the Committee asserts that it also carries out “private party business” that does “not have a public purpose,” and the Committee “should not be considered a public body” when it gathers for any reason other than nominating members to the elections board or filling vacancies on the city council.

As a preliminary matter, the Act does not define “public body” as a fluid concept; if an entity satisfies any of the three tests established in § 3-101(h), it is a “public body” for purposes of the Act. Further, a determination that an entity is a public body is not a

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conclusion that a violation has occurred. As already noted, the Act's open meeting requirements apply only when a public body is holding a "meeting" and the substance of the meeting is subject to the Act. §§ 3-101, 3-103.

Returning to the matter at hand, the provision of the Annapolis code providing that the party "shall elect" a central committee, and the Committee's statement that "it is established in" the Annapolis code, suggest that the Committee might satisfy the "created by law" test in § 3-101(h)(1). However, 3 *OMCB Opinions* 278 (2003), in providing further elaboration on the matter, stated that the Republican State Central Committee for Queen Anne's County is not a "public body," despite being subject to State laws that resemble the Annapolis ordinance. 3 *OMCB Opinions* at 279-80 & n.4 (citing Title 4, Subtitle 2 of the Election Law Article of the Maryland Code). Section 4-201 of the Election Law Article provides that "[e]ach political party shall have a State central committee" that "is the governing body of the political party," Md. Code Ann., Elec. Law § 4-201(a), and § 4-202 provides that a "political party shall elect the members of the county central committee at a primary election," Md. Code Ann., Elec. Law § 4-202(a).³ We observed that, "[a]lthough the State's Election Law regulates party central committees to a certain extent, they are created not by State statute but rather by a political party's constitution and bylaws." 3 *OMCB Opinions* at 279-80 (footnote omitted).

Based on the submissions before us, we are unable to determine whether the Maryland Democratic Party established the Committee or whether the entity exists solely by virtue of § 4.12.010 of the Annapolis code. The party's bylaws establish a state central committee and "local democratic central committees," see Maryland Democratic Party By-Laws, Arts. III, X (amended May 22, 2021), *available at* <https://mddems.org/wp-content/uploads/2021/06/Current-MDP-By-Laws-as-amended-5-22-2021.pdf>, but the party's website lists only countywide entities as "central committees," see Maryland Democratic Party, "Central Committees," <https://www.mddems.org/your-party/party-organization/central-committees/> (last visited June 29, 2021). The Annapolis Democratic Central Committee is listed as a "local club." Maryland Democratic Party, "Party Organization: Local Clubs," <https://www.mddems.org/your-party/party-organization/local-clubs/> (last visited June 28, 2021).⁴

Without knowing more about the precise origin of the Committee, we cannot say with certainty whether it is a "public body" subject to the Act.⁵ Regardless, we find no

³ "The requirement that political parties form central or county committees composed of specified representatives from each district is common" and "part of broader election regulations that recognize the critical role played by political parties in the process of selecting and electing candidates for state and national office." *Marchioro v. Chaney*, 442 U.S. 191, 195-96 (1979).

⁴ The submissions do not include the Maryland Democratic Party's constitution and we have been unable to find a copy online.

⁵ We conclude that the Committee does not satisfy any other definition of "public body" under the Act. The Committee is not a State entity, and its members are elected, not appointed by the chief executive officer of Annapolis. See § 3-101(h)(2).

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violation here, as the submissions fail to establish the second prerequisite for the Act to apply: a “meeting” as defined by the statute.

2. *Whether the Committee’s monthly gatherings are “meetings”*

Even if we were to find that the Committee is a “public body,” the Act applies only when such body is “holding a meeting.” 4 *OMCB Opinions* 122, 124 (2005). *See also* §§ 3-301 (providing, generally, that “a public body shall *meet* in open session”) (emphasis added), 3-101(g) (defining “meet”). We have no basis to conclude that the Committee’s monthly gatherings satisfy the statutory definition of “meeting.”

A public body “meets” when it “convene[s] a quorum^[6] . . . to consider or transact public business.” § 3-101(g). Conversely, when a quorum of a public body convenes for some other purpose, “there is no ‘meeting’ and the Act does not apply.” 1 *OMCB Opinions* 157, 157 (1996). A “meeting” does not include “a chance encounter, social gathering, or other occasion that is not intended to circumvent [the Act].” § 3-103(a)(2).

The Act does not define “public business,” but we have applied the meaning that the General Assembly has used elsewhere in the Maryland Code: “all matters within the jurisdiction of a public agency which are before an agency for official action or which reasonably, foreseeably may come before that agency in the future.” 2 *OMCB Opinions* 5, 7 (1998) (quoting a provision of the St. Mary’s County Open Meetings Act, previously found at Article 24, § 4-202(d) of the Maryland Code⁷). In other words, “[p]ublic business encompasses those matters over which the public governmental body has supervision, control, jurisdiction or advisory power.” *Kansas City Star Co. v. Fulson*, 859 S.W.2d 934, 940 (Mo. Ct. App. 1993), *quoted in* 3 *OMCB Opinions* 274, 276 (2003), and *cited in* 2 *OMCB Opinions* at 7. *See also* 5 *OMCB Opinions* 60, 64 (2006) (finding that a public body is “involved in the consideration of public business when a quorum of the body meets to carry out its charge”); 3 *OMCB Opinions* at 275 (observing that “the General Assembly’s statement of legislative policy that introduces the Act suggests that ‘the consideration or transaction of public business’ is synonymous with ‘the performance of public officials’ in relation to ‘the deliberations and decisions that the making of public policy involves’”).

This interpretation, “reflect[ing] the usual understanding of the term,” 2 *OMCB Opinions* at 7, is also consistent with how courts and legislatures outside Maryland have defined “public business.” *See White v. King*, 60 N.E.3d 1234, 1239 (Ohio 2016) (finding that “the words ‘public business’ relate only to matters within the purview of a public

⁶ A quorum is simply a majority of the members of a public body or any different number that law requires. § 3-101(k).

⁷ That provision, amended and recodified without substantive change, now appears in § 9-504 of the Local Government Article, which provides generally that “a public agency meeting at which official action is taken shall be open to the public.” According to a revisor’s note, “the former reference to ‘public business’ [was] deleted as implicit in the reference to a ‘public agency meeting.’” 2013 Md. Laws 923. *See also* Md. Code Ann., Local Gov’t § 9-501(d) (defining “public agency meeting” to mean “the convening of a quorum of the constituent membership of a public agency to deliberate or act on a matter under the supervision, control, jurisdiction, or advisory power of the public agency”).

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body's duties, functions and jurisdiction") (cleaned up) (quoting *Lucarelli v. Freedom of Info. Comm'n*, No. CV 91-0063707S, 1992 WL 209848, at *3 (Conn. Super. Ct. Aug. 18, 1992)); *Associated Press v. Canterbury*, 688 S.E.2d 317, 325 (W. Va. 2009) (same); *Doe I v. Colo. Dep't of Pub. Health & Env't*, 454 P.3d 327, 337 (Colo. Ct. App. 2018) (noting that "public business" requires "a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting"), *aff'd*, 451 P.3d 851; Del. Code Ann. tit. 29, § 10002(j) (defining "public business" as "any matter over which the public body has supervision, control, jurisdiction or advisory power"); Ind. Code Ann. § 5-14-1.5-2 (e) ("Public business" means any function upon which the public agency is empowered or authorized to take official action.").⁸

Applying this understanding of "public business," we have previously found that a body does not "meet" for purposes of the Act when its "members engage only in social activities," 12 *OMCB Opinions* 102, 102 (2018), such as gathering for a retreat to improve interpersonal relations, 6 *OMCB Opinions* at 66-67; 3 *OMCB Opinions* at 275-76; sharing a table at a restaurant, 2 *OMCB Opinions* 74, 76 (1999); engaging in "[s]ocial conversation around a breakfast buffet," 3 *OMCB Opinions* 257, 258 (2003); having coffee together, 7 *OMCB Opinions* 269, 271 (2011); or meeting for dinner and drinks, 5 *OMCB Opinions* 93, 95-96 (2007).

Especially relevant here is 3 *OMCB Opinions* 310, 311-12 (2003), in which we recognized that "a political gathering" is generally outside the scope of the Act. Relying on *Ajamian v. Montgomery County*, 99 Md. App. 665 (1994), we observed that "[t]hese types of gatherings, even if a quorum of a public body is present, are generally to be classified as social gatherings or other occasions that are not intended to circumvent the Act." 3 *OMCB Opinions* at 312. In *Ajamian*, the Court of Special Appeals held that members of the Montgomery County Council did not "meet" when they attended a gathering of the local Democratic Central Committee, because they did not deliberate public business: Although the council president responded to a request for a briefing on various councilmanic redistricting plans, "[t]here [was] no evidence that any County Council members spoke to any other County Council member" or that "any County Council member took a position that would have been known by anyone there, much less one of the other County Council members." 99 Md. App. at 676-77.

We recognize that *Ajamian* involved a complaint against the county council, not the Democratic Central Committee itself, as is the case here. Nonetheless, the *Ajamian* Court found that certain "political expression of views in an explicitly partisan setting" are "beyond the scope of the Open Meetings Act." 3 *OMCB Opinions* at 281.

The Committee asserts that its regular monthly gatherings "are convened to discuss private party business and not the [Committee's] public purposes of filling vacancies on

⁸ We do not read these definitions of "public business" to mean that open meetings requirements are inapplicable when a body convenes to take action that it thinks is within its jurisdiction but is actually *ultra vires*. If a public body convenes with the intention of "carry[ing] out its charge," 5 *OMCB Opinions* at 64, even if the body has misinterpreted that charge, the body should assume that the Act applies and proceed accordingly.

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the [Annapolis City] Council and nominating members to the Annapolis Board of Elections.” The Complainant does not dispute that the Committee “is authorized to discuss party business” but insists it “cannot do it in secret” unless it properly invokes one of the fifteen exceptions in § 3-305(b). Absent a preliminary finding that a public body is “meeting,” however, there is no need to consider whether an exception in § 3-305(b) allows the body to meet in a session closed to the public. *See 15 OMCB Opinions* 11, 12 (2021) (explaining that § 3-305(b) comes into play only “[w]hen the Act applies”).

In this case, the submissions fail to establish that the Committee’s monthly gatherings constitute “meetings” for purposes of the Act. Although the Committee has offered no specifics about its “private party business,” the Committee represents that its gatherings do not relate to the Committee’s narrow charge under Annapolis law: filling vacancies on the city council and nominating members to the City’s elections board. The Complainant suggests no evidence to the contrary. Because the Committee is apparently convening to discuss private political matters in a partisan setting, rather than to “carry out its charge” under the Annapolis city code and charter, the Committee is “not involved in the consideration of public business.” *5 OMCB Opinions* at 64. *Accord Jones v. Geauga Cty. Repub. Party Cen. Comm.*, 82 N.E.3d 16, 21 (Ohio Ct. App. 2017) (finding that members of a political party’s central committee were “public officials” subject to Ohio’s open meetings act when carrying out their statutory duty of filling vacancies in county offices but not subject to the act when “addressing the internal affairs of the political party”). Thus, even if we were to find that the Committee is a “public body,” we cannot conclude that a “meeting” has occurred based on the submissions before us.

Conclusion

We conclude that the submissions fail to show that the monthly gatherings of the Annapolis Democratic Central Committee are “meetings” of a “public body” as the Act defines those terms. Accordingly, we find no violation.

Open Meetings Compliance Board

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